In The High Court of Uttaranchal at Nainital

F.A.F.O. No.1575/2001
(Old no. 162 of 1998)

National Insurance Company
Ltd. through its Administrative
Officer, Divisional Officer,
25, M.G. Marg, Allahabad …….. Appellant.

Versus

Smt. Sneh Lata Bhandari and 3 others …… Respondents.

Sri Lalit Belwal, learned counsel for the petitioner.
Sri S. Naithani, Sri Pardeep Lohani, learned counsel for respondents.

Date: 18-8-2004

Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred against order dated 27-11-1997, made by the Motor Accident Claim Tribunal/ II Additional District Judge, Nainital, in M.A.C.T. Case no. 19/1995.

2- Brief facts giving rise to this appeal are that on 9-8-1994 at 11 a.m. Pradeep Singh Bhandri along with his father G.S. Bhandari was coming form his resident at Motahalldu- Haldwani towards his office in his own Ambassador Car No. U. 02/5884. The car was being driven by the deceased Pradeep Singh Bhandari. When the car reached ahead of Moti Nagar, vehicle bearing no. U.P. 02/A - 0386 came form opposite direction very rashly and dashed the car of the deceased and the car fell into the ditch resulting serious injuries to Pradeep Singh and his father. Lateron Pradeep Singh Bhandari died in the hospital due to the injuries sustained by him in the accident. The claimants filed claimed under section 166 of the Motor Vehicles Act before the tribunal concerned and compensation of Rs. 11,60,000/- along with interest @ 6% per annum was awarded to the claimants.

3- In appeal the National Insurance Company has taken the grounds that the driver of the vehicle insured with it was not having a valid licence and he had fake licence at the time of the accident. The driver had licence to driver the light vehicle like taken and had not the

licence to drive the heavy vehicles. The insurance company also pleaded that the compensation awarded is exorbitant.

4- The deceased Pradeep Singh Bhandari at the time of accident was aged about 28 years. He was partner and Director of Companies. His annual income of the deceased was taken as 73,930/- on the basis of income tax return filed on record. Multiplier of 10 was applied and after deducting 1/3rd towards personal expenses and compensation was assessed at Rs. 11,60,000/- which appear to be just and proper.

5- As regards the fake licence held by the driver of the truck involved in the accident is concerned, the tribunal has not recorded any finding in its judgment. If there was any breach of insurance policy form the side of the owner/driver of the vehicle and instead of insurer the owner/driver of the vehicle were liable to pay the compensation, this aspect should have been decided by the tribunal while awarding the compensation. The interest of justice will be sub served if the appellant herein is directed to satisfy the awarded amount in favour of the claimants, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the Accident Claims Tribunal and same was decided against the owner and in favour of the insurer, as has been held by the Apex Court in the matters of *National Insurance Co. Ltd. Vs. Swarn Singh and others; (2004)3 S.C.C. 297 and United India Insurance Company Ltd. Vs. Lehru and others; A.I.R. 2003, Supreme Court, 1292.*

6- In view of the law laid down by the Supreme Court, in the above mentioned case, under Article 142 of the Constitution of India, to meet the ends of justice the Insurance Company was directed to satisfy the award. Therefore, in the same terms we direct that the Insurance Company shall satisfy the award and shall recover the amount of the same from the insured, if the liability of the insured is fixed by the executing court i.e. Motor Accident Claims Tribunal.

7- For the aforesaid reasons, the appeal is disposed of accordingly subject to the directions aforementioned.

8- The amount of compensation if deposited here, shall be transmitted to the Motor Accident Claims Tribunal concerned.

(P.C. Verma, J.) **(B. S. Verma, J.)**

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